

Testimony of Rep. Steve Pearce
Subcommittee on Public Lands and Environmental Regulation
July 24, 2014

Chairman Bishop, Ranking Member Grijalva, Members of the Subcommittee: thank you for conducting this hearing today on federal agencies' intimidation and bullying tactics of private citizens. I asked the Natural Resources Committee in May to conduct a hearing on this topic as it relates to Otero County, New Mexico. I appreciate the Subcommittee looking into these issues, as well as inviting the people on the ground who deal with the Forest Service every day. I am proud to call Otero County Commissioner Ronnie Rardin a personal friend. I'd also like to thank Jose Varela Lopez of the New Mexico Cattlegrowers' Association, Attorney Blair Dunn and Rancher Mike Lucero for making the journey all the way from the Land of Enchantment to our nation's capital for today's hearing.

Our National Forests are a real treasure to the people of New Mexico. We in Southern New Mexico know conservation better than any outside special interest group or bureaucrats in Washington. Sportsmen require access to public lands to hunt and fish. Tourists need the ability to move their vehicles along roads, and recreational enthusiasts must be able to bring boats and OHVs to truly enjoy everything that our forests have to offer. And our ranchers, often surrounded by federal lands and checkerboarding, require rights of way and grazing permits that they pay for. Allowing such varied forms of access helps to achieve the necessary balance that protects our lands and economic interests.

However, in recent years, we've seen a sharp turn for the worse from federal land management agencies. Balance is not the order of the day, but instead agencies look to implement a narrow special interest-led agenda. BLM is slow-walking oil and gas drilling applications. The Forest Service only puts up minimal acreage for necessary thinning projects. Grazing is abruptly stopped because of faulty science. Public access to public lands and resources is being cut off.

The situation in Otero County began this spring when the US Forest Service began construction of a pipe fence that directly impacted the water rights of ranchers in the Agua Chiquita riparian area of the Lincoln National Forest. This was done to maintain the habitat of the meadow jumping mouse—before the mouse was even listed as endangered. The Service claims that the construction of this fence would not impact ranchers who own the water because their cattle can move through two small fence openings. Imagine trying to herd a large number of cattle through a ten foot-wide opening in a fence. Bureaucrats and interest groups treat that as a solution—I believe it's a shell game.

Had the Forest Service actually consulted the Office of the State Engineer, the agency which oversees water rights in New Mexico, the Forest Service would have learned what my office learned within 24 hours of contacting the State Engineer: the Goss family has adjudicated water rights in the Agua Chiquita dating back to the 1880s. The fact that an agency would make the claim that water rights do not exist when they clearly do is an example of the federal government's arrogance and an attempt to bully our local ranchers into submission.

The Forest Service also claims to accommodate ranchers by saying that trenches near the Agua Chiquita allow water to flow under the fences. New Mexico has been in a drought since 2011, and water does not flow through these trenches unless a heavy downpour occurs. The New Mexico State Supreme Court has ruled that an individual with water rights has the ability to move the water to their cattle. The Court of Federal Claims sided with the Goss ranch in a similar case four years ago. The actions of the Forest Service have made it nearly impossible to move the water to the cattle, violating state law.

Despite the bullying by the federal government, the county attempted to mediate this dispute with the US Attorney's Office. When my office asked to attend this meeting, the US Attorney and Forest Service threatened to cancel it, leaving one to wonder why an elected official is being excluded. At this meeting, the Forest Service and US Attorney refused to compromise. They would not even agree to not lock the gates on the fence until this issue could be discussed more thoroughly, and resolved.

I am afraid that this is only the opening salvo from federal agencies attempting to further restrict access to water and other vital resources in the West. The Environmental Protection Agency is attempting to regulate virtually every ditch in the United States under the Clean Water Act. The Forest Service believes it has the right to regulate groundwater it does not own, including groundwater underneath lands it does not own, as well as the power to review state water rights applications. The arrogance and bullying by federal agencies must stop.

This is not some theoretical argument. This is about our culture and livelihood. This is about the economy of Southern New Mexico and the West as a whole.

Chairman Bishop, Ranking Member Grijalva and members of the Subcommittee, I would like to once again thank you for holding this hearing today. The legislative branch exists in part to conduct oversight of executive agencies. It is time to exercise that power, and rein them in.